

BEFORE THE

**Federal Communications Commission** RECEIVED

WASHINGTON, D.C. 20554

OCT 12 1993

In the Matter of:

Amendment of Section 76.51 of the )  
 Commission's Rules to Include )  
 Concord, California in the )  
 San Francisco-Oakland-San Jose, )  
 California, Television Market )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM DOCKET 93-232

TO: Chief, Mass Media Bureau

**REPLY TO GREAT WESTERN BROADCASTING CORP.  
COMMENTS ON PETITION BY FIRST CENTURY BROADCASTING, INC.**

First Century Broadcasting, Inc., licensee of KFCB-TV, Channel 42, Concord, California (KFCB) files this reply in response to "Great Western Broadcasting Corp.'s Comments on Petition by First Century Broadcasting, Inc." Great Western, licensee of KXTV in Sacramento, California opposes inclusion of Concord, California in the San Francisco-Oakland-San Jose, California television market.<sup>1</sup>

Great Western first argues that KFCB has failed to demonstrate "the required commonality between Concord, California and the San Francisco-Oakland-San Jose television market." Comments at p. 3. Great Western supports its position by making overly broad unfounded statements. For example, Great Western alleges "FCB has failed to present any evidence that there are shared social, cultural, trade or economic interests between

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<sup>1</sup> KFCB filed a consent motion for extension of time to file reply comments in this proceeding on October 5, 1993. KFCB requested a two-business day extension until October 12, 1993 to file reply comments. The Commission advised telephonically that the consent motion had been granted.

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Concord, California and the communities of San Francisco, Oakland or San Jose." Comments at p. 4. On the contrary, KFCB notes that it provides Grade A service to San Jose, San Francisco, and Oakland. The Commission has specifically determined that communities even within the station's Grade B contour provide economic support. See Major Television Markets (Orlando, Daytona Beach-Melbourne, Cocoa, Florida), 57 RR2d 685, 690 (1985)("We believe that television stations actually do or logically can rely on the area within the Grade B contours for economic support. Thus we believe that the communities do, in fact, comprise a single television market for economic purposes"). Equally significant is that all stations licensed to San Francisco, Oakland, and San Jose provide Grade A service to Concord. It is evident, therefore, that in the broadcast arena, the cities have an economic relation and interdependence. Indeed, the Commission itself considers Concord to be so much part of the San Francisco-Oakland-San Jose market that the Commission suggested that KFCB recruit employees from the "nearby San Francisco-Oakland area," which KFCB does and has done. See MO&O, FCC 91-134 (released May 3, 1991) at ¶24.

KFCB also notes the proximity of all these communities. Concord is only 32 miles from San Francisco, 40 miles from San Jose, and 19 miles from Oakland. It is somewhat ludicrous to imply that there are no shared social, cultural, trade, or economic interests between these communities. These communities are all part and parcel of the Bay area. Again, the Commission has assumed common social, cultural, trade and economic interests

from mere proximity. See Major Television Markets (Fresno/Visalia, California), 57 RR2d 1122, 1123 (1985). KFCB also notes that Concord is within the San Francisco-Oakland-San Jose "area of dominant influence." Stations that are within the same "area of dominant influence" also support the conclusion that the stations compete and that there is economic interdependence. Major Television Markets (Clairmont, Orlando, Daytona Beach, Melbourne, Cocoa, Florida), DA93-579 (released May 19, 1993). KFCB also derives substantial support from the Oakland-San Francisco-San Jose areas. It derives over 90 percent of its area revenues from areas other than Concord.<sup>2</sup>

Great Western asserts that KFCB has failed to present any "compelling evidence that the public would benefit from the addition of Concord to the San Francisco-Oakland-San Jose television market." Comments at p. 5. Great Western apparently believes that the continued viability of KFCB as asserted in KFCB's Comments is not a public benefit. KFCB respectfully begs to differ. KFCB is a local station that serves the communities of San Francisco, Oakland, and San Jose which are all within its Grade A contour. See Amendment of Major Television Markets (Orlando-Daytona Beach, et al.), supra, at ¶19 (station that provides local programming provides a "public benefit"). The

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<sup>2</sup> In its Petition for Rulemaking, KFCB noted that 90 percent of its revenue was derived from areas other than Concord within the market. That should more accurately state from areas other than Concord "within its service area." This area includes revenue generated from Sacramento and other areas outside the San Francisco ADI. Revenues generated within the San Francisco ADI excluding Concord are approximately 60 percent.

elimination of any unfair competitive disadvantage vis-a-vis other market stations is especially critical to a small independent station like KFCB.

Great Western also suggests KFCB offers no demonstrated benefit to the public and is not recognized as a local station. KFCB airs a significant amount of local programming addressing the needs of San Francisco, Oakland, and San Jose residents. Some of the programming specifically addressing the needs of San Francisco, Oakland, or San Jose is:

"Cathedral of Faith Hour": one-hour church service with Rev. Kenny Foreman from the Cathedral of Faith in San Jose, California. The program airs three times weekly.

"New Beginnings": 30-minute church service with Rev. Emmaneule Cannistraci from Evangel Christian Fellowship in San Jose, California. The program airs once weekly.

"God's Word of Ministry": 30-minute church service with Dr. Arelious Walker from True Hope Church of God in Christ Church in San Francisco, California. The program airs once weekly.

"Buenas Nuevas": 30-minute Spanish speaking program with Erma Contreas from Santa Clara, California. The program airs once weekly.

"Night Talk": a live, all-night talk show 2-3 times weekly with phone workers available to take calls from viewers. There is a group of selected hosts who are responsible for the program one night per month. Among the hosts are:

Rev. Bob Jackson, Senior Pastor of Acts Full Gospel Church in Oakland, California.

Rev. Malcolm Lee, Executive Director of Richmond Rescue Mission in Richmond, California.

Rev. Lester Hughes, Senior Pastor of Oakland Christian Center in Oakland, California.

Charlie Peisner, Catholic Charismatic Liaison for the Oakland Diocese. He is the coordinator and one of the many hosts who organize and program the second Friday morning each month.

Ronnie Syenhardt, International Director, Full Gospel Businessmen's Fellowship International and President of Svenhardt's Swedish Bakery, Oakland, California is co-host and coordinator of the FGBMFI's Night Talk broadcast which is the fourth Saturday morning of each month. Mr. Svenhardt shares this assignment with John Harrison, Full Gospel Businessmen's Fellowship International Field Representative - Correctional Facilities and Public Relations Production Specialist and "Official Taster" for Dreyers Grand Ice Cream, Berkeley, California. This program features businessmen and women from all over the bay area and surrounding locations.

Rev. Richard Gazowsky, Senior Pastor, Voice of Pentecost Church, San Francisco, California is the Co-producer of "Mainstream."

"Coast to Coast:" one-hour program which airs nightly at 8:00 p.m. and is replayed the following weekday at 10:00 a.m. and 2:00 p.m. The program is hosted by Ronnie and Connie Haus but periodically guest hosts and co-hosts appear on the program. The program has had many hosts, co-hosts and guests from San Francisco, San Jose and Oakland.

See also the attached declaration of Debra Fraser, General Manager of KFCB, submitted in conjunction with KFCB's Brief as Intervenor in the Viacom v. FCC litigation in the United States District Court, Northern District of California.

Newspaper television listings from San Francisco, Oakland, and San Jose list KFCB as a local station. The San Jose Mercury lists KFCB in their weekend television listing. The Oakland Tribune lists KFCB in its weekend and daily listings. KFCB is also listed in television listings in the San Francisco Chronicle and The Examiner.

Great Western accuses KFCB of misusing the Commission's modification procedures. The alleged misuse is premised on KFCB's efforts to reduce cable copyright costs. KFCB's effort is not to seek some advantage but to eliminate a significant disadvantage threatening its viability. Market re-hyphenation is specifically intended to help equalize competition which is precisely what KFCB is attempting to do. KFCB requests only that it be treated as a distant signal for copyright purposes in the same way that the vast majority of stations in the San Francisco ADI are treated. Contrary to Great Western's implications otherwise, copyright liability issues have been recognized and treated as a legitimate basis for market redesignation. Amendment of Commission Rules to Include Clearwater, Florida in the Tampa-St. Petersburg, Florida Television Market, DA 93-931 (released July 29, 1993)(copyright liability basis for considering market re-designation).

Great Western claims that there is nothing in KFCB's petition that rises to the level of a clear showing of particularized need that is not shared by at least a dozen of other television stations. Comments at p. 9. This simply isn't true. The focus here is the San Francisco ADI.<sup>3</sup> There clearly are not "dozens of other stations in KFCB's situation." The vast majority of commercial stations licensed to communities within the San Francisco ADI are licensed to either San Francisco, Oakland, or San Jose. See Amendment of Major Television Markets (Orlando-

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<sup>3</sup> San Francisco ADI refers to the San Francisco-Oakland-San Jose ADI.

Daytona Beach, et al.), supra at ¶19 (particularized need demonstrated by competitive disadvantage in cable carriage).

KFCB has responded, supra, to Great Western's claims that KFCB has offered no evidence that it competes with stations licensed to San Francisco, Oakland, or San Jose. Great Western goes further, however, and affirmatively states, without offering any evidence, that KFCB does not compete with non-religious stations for the purchase of programming, audience viewing ratings, the sale of advertising, or other sources of revenue. Opposition at p. 7. Again, this is not true. KFCB clearly competes for audience viewership, the sale of advertising, and for financial support. Even Viacom in its Comments concedes this. Viacom Comments at p. 7. KFCB sells advertising time to churches and others in the San Francisco-Oakland-San Jose area. It competes with other San Francisco ADI stations as an outlet for much of its religious programming, such as the 700 Club. KFCB has also had to pay San Francisco ADI rates when purchasing secular programming.<sup>4</sup>

In an effort to make KFCB appear disingenuous, Great Western references KFCB's recently filed Petition for Special Relief. In that Petition, KFCB seeks to have Sacramento included within its local market for must-carry purposes. KFCB, of course, is also attempting in this rulemaking to include Concord as a designated community in the San Francisco ADI. Great Western responds by

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<sup>4</sup> KFCB notes that much, if not most, of the precedent cited by Great Western are Notices of Proposed Rulemaking. Since these notices are proposals and do not represent Commission action, they should be weighted accordingly.

stating, "FCB is clearly trying to have it both ways before the Commission and the absolute transparency of FCB's present claim is evident from these flatly contradictory assertions." Comments at p. 3. There is nothing contradictory or transparent about KFCB's efforts. The Commission specifically recognizes that a station may also be considered local to communities outside its ADI and specifically provides procedures for including these communities in that station's market. KFCB has amply demonstrated it does provide local service to the Sacramento area through its programming and through other services. Great Western, it appears, believes this is inconsistent and ipso facto means that KFCB has no relation to and provides no service to communities within its ADI. This, of course, is not true. As noted, supra, KFCB provides considerable local programming addressed to San Francisco-San Jose-Oakland and other communities.<sup>5</sup>

Great Western claims, "If the Petition is granted, KFCB-TV will be [sic] receive rights to the San Jose 35 mile zone, much of which is outside KFCB-TV's Grade B contour." Comments at p. 10. There is a small area south of San Jose which is outside KFCB's Grade B contour. The Commission noted in the Notice of

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<sup>5</sup> Great Western argues that KFCB's "specialty station status" as a religious programmer negates or minimizes its copyright liability concerns. However, even distant signal specialty stations must pay significant copyright liability. There is likewise no question that, absent the relief requested by KFCB, KFCB would be subject to copyright liability to cable systems where other stations in the San Francisco ADI will pay none. KFCB further notes that Cocoa was added to the Orlando-Daytona Beach ADI at the request of WTGL-TV, Good Life Broadcasting, Inc., a religious broadcaster. See Major Television Markets (Orlando-Daytona Beach-Melbourne-Cocoa, Florida, 57 RR2d 685 (1985)).



Proposed Rulemaking in this proceeding, that in evaluating past requests for hyphenation of the market, the Commission has considered inter alia, "whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area." Id. at ¶3. KFCB does not seek, nor will it be granted, any greater cable coverage rights than it is already entitled to under the Cable Act as a station located within the San Francisco ADI. The only difference is that grant of the requested relief will help eliminate considerable copyright liability.<sup>6 7</sup>

In sum, the public interest is served by including Concord in the San Francisco-Oakland-San Jose, California television

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<sup>6</sup> Great Western claims that it will suffer great harm if the market is re-designated because it will result in the elimination of a significant area of network non-duplication and syndicated programming exclusivity protection of KXTV. KXTV offers no specifics despite criticizing KFCB for its alleged lack of specificity. It appears that the area involved is relatively small. Furthermore, KXTV network non-duplication and syndicated programming exclusivity protection should be based on its market, and not on the San Francisco ADI of which it is not a part. Finally, as noted by the Commission in Amendment of Major Television Markets (Orlando-Daytona Beach, et al.), supra, in rejecting similar economic type concerns raised by various cable companies, the focus is on the criteria for granting market re-designation, not on the impact on certain cable systems or, as here, television stations outside the San Francisco ADI. Id. at ¶23.

<sup>7</sup> Great Western in note 7 makes much of the fact that KFCB's transmitter site is located on Mount Diablo whereas the transmitter sites for San Francisco and Oakland stations are on either Mount Sutro or San Bruno and stations licensed to San Jose have transmitter sites located on Monument Peak or Loma Prieta. It is interesting to note that the distance from Mount Sutro to Loma Prieta (55.66 miles) is further than the distance from Mount Diablo to any of other transmitter sites. The distance from Mount Diablo to San Bruno Mountain is 32.6 miles; and 31.7 miles to Mount Sutro, 53.9 miles to Loma Prieta, and 28.2 miles to Monument Peak.

market. Concord is part of the Bay Area, only a short distance from San Francisco, Oakland, and San Jose. KFCB's Grade A signal covers these communities, and the stations licensed to these communities cover Concord with their Grade A signals. KFCB generates at least 60 percent of its revenue (excluding Concord) from the San Francisco ADI. KFCB provides significant local programming to San Francisco, Oakland and San Jose. KFCB has a particularized need for market redesignation to equalize competitive forces in the San Francisco ADI and to help ensure the viability of KFCB, an independent station. The relief requested would place KFCB on an equal footing with other San Francisco ADI stations for purposes of determining distant signals for copyright liability. This will help ensure that the local programming offered by KFCB is available to cable viewers within the San Francisco ADI.

Respectfully submitted,

FIRST CENTURY BROADCASTING, INC.

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By   
A. Wray Fitch III  
Its Attorney

October 12, 1993

[0060/C93awfReply2]

DECLARATION

I, Debra Fraser, hereby declare under penalty of perjury that the following is true and correct.

1. I am the General Manager of KFCB-TV, Concord, California.
2. I have reviewed the foregoing Reply and the information concerning KFCB's programming, service and other matters directly related to KFCB are true and correct to the best of my knowledge and belief.

10/12/93  
Date

  
Debra Fraser

9/16 Hsu  
Jo [unclear]

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 VIACOM INTERNATIONAL INC.,	)	No. <u>C-93-1984-EFL</u>
	)	
12 Plaintiff,	)	DECLARATION OF
	)	DEBRA FRASER
13 v.	)	
	)	
14 FEDERAL COMMUNICATIONS COMMISSION,	)	
Washington, D.C. 20554	)	
15 et. al.	)	
16	)	

17 I hereby declare, under penalty of perjury, that the  
18 following is true and correct to the best of my knowledge and  
19 belief.

20 1. I am the General Manager of television station KFCB  
21 Channel 42 in Concord, California ("TV 42").

22 2. I have been associated with TV 42 for ten years and have  
23 firsthand knowledge of the matters set forth herein. In  
24 particular, I have been involved with TV 42's efforts to gain and  
25 maintain access to cable systems during the past ten years.

26  
27  
28  
DECLARATION OF  
DEBRA FRASER

1 3. TV 42 is a specialty station that serves Northern  
2 California by providing a mix of religious and non-religious  
3 programming.

4 4. TV 42 offers local programming which is an outlet for  
5 organizations and churches to meet community needs. TV 42 also  
6 offers national programs selected primarily to serve the local  
7 religious community. Special areas of service include programming  
8 for children designed to promote moral character and programs  
9 designed to meet the needs of hearing impaired children and  
10 adults.

11 5. Through diligence and persistence, TV 42 gained carriage  
12 on most of Viacom's cable systems in the greater San Francisco  
13 area during the period from 1983-1985.

14 6. Since the "must carry" rule was overturned in 1985, TV 42  
15 has lost its place on the majority of Viacom systems on which it  
16 had gained carriage and has not been added to any systems.

17 7. In response to an FCC inquiry, KFCB completed a Cable  
18 System Broadcast Signal Carriage Survey in June, 1988. This  
19 report identified at least 20 cable systems which dropped carriage  
20 of TV 42 subsequent to July 1985 when the Commission's former  
21 must-carry rules were no longer in effect. See Attachment A. See  
22 also Attachment B. (The Attachments are not submitted under  
23 penalty of perjury but are believed to be accurate).

24 8. The vast majority of the programming substituted for  
25 TV-42 on the identified systems was distant satellite delivered  
26 programming, such as Nickelodeon.

1           9.       Viacom Cable dropped TV 42 from its cable systems  
2 subsequent to July 1985 in Belvedere, Corte Madera, San Rafael,  
3 Larkspur, San Anselmo, Sausalito, Tiburon, Mill Valley, Pinole,  
4 Crockett, Rodeo, El Sobrante, San Pablo, Napa, Dublin, Livermore,  
5 San Ramon, Pleasanton, Sunol, and San Francisco. Viacom refused  
6 to carry KFCB on its San Francisco cable system despite strong  
7 community support for carriage.

8           10.       According to Terry Dillon, then manager of the Viacom  
9 Napa System, Viacom Cablevision conducted a survey in 1986. KFCB  
10 ranked third from the bottom. Viacom opted to substitute  
11 programming for two channels on its cable system, but instead of  
12 removing the two bottom ranked stations, it deleted KFCB instead  
13 of one of the lower ranking channels.

14           11.       Several hundred subscribers wrote letters requesting  
15 that KFCB be carried again in Napa County, parts of West Contra  
16 Costa County and Marin County. The City Council of Napa conducted  
17 a public hearing and at the hearing's conclusion, asked Viacom to  
18 reconsider its decision. A public hearing was held in Contra  
19 Costa County as well. The City Council of Pinole directed the  
20 city attorney to examine the franchise agreement with Viacom.  
21 Members of the Pinole Council requested that KFCB be carried by  
22 Viacom to no avail.

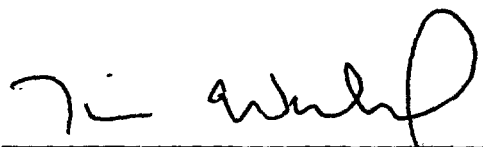
23           12.       Despite substantial evidence of viewer interest in TV  
24 42, and the complete absence of alternative religious channels on  
25 some of its cable systems, Viacom has failed to make room for TV  
26 42 on any of its systems identified in Paragraph 9. This is so  
27

**CERTIFICATE OF SERVICE**

I, Tim Wineland, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent, this 12th day of October 1993, by first-class, postage-prepaid, U.S. Mail, copies of the foregoing REPLY TO GREAT WESTERN BROADCASTING CORP. COMMENTS ON PETITION BY FIRST CENTURY BROADCASTING, INC. to the following:

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\_\_\_\_\_  
Tim Wineland